

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 5, 2007**

CALL TO ORDER The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, Gina Klempel, Craig Wagner, Scott Hollinger and Mark Hash. George Smith, Annie Thompson, Kirsten Holland and Jeff Harris represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 20 people in the audience.

APPROVAL OF MINUTES Klempel made a motion, seconded by Sagami, to approve the April 3, 2007 meeting minutes. *Wagner abstained from voting.*

The motion was carried by quorum.

**COLBY SHAW
ZONING
VARIANCE
(FZV 07-03)**

A request by Colby Shaw, for a Zoning Variance to property within the Highway 93 North, SAG-5 (Suburban Agricultural) Zoning District. The applicant is requesting a variance to section 5.09.030.7 and/or 3.08.040.3A, of the Flathead County Zoning Regulations, which requires 20 foot setbacks from the property lines, and at least 40 feet from any other boundary of the "parent" tract or adjacent properties. The applicant had a home built and has an existing garage that encroach approximately 2 feet into the 20 foot setback, and approximately 17 feet into the 40 foot setback. The home was built with faulty determination of property lines and therefore the setbacks were not properly applied. The property is located at 89 Tronstad Drive.

STAFF REPORT BJ Grieve, of the Flathead County Planning & Zoning Office, reviewed Staff Report FZV 07-03 for the Board.

**BOARD
QUESTIONS**

Klempel asked what the square footage of the house is.

A member of the audience said 3,100 square feet.

Hash asked if it was possible to do a boundary line adjustment.

Grieve said the applicant could address the topic better.

Wagner asked if the property was for sale.

Grieve said the reason the problem came up was because it was on the market.

Hollinger asked what the trigger measure was to find out if the setback was in violation.

Grieve said the fairest answer is there isn't any trigger measure that would show the clustering zoning and setbacks.

Hash asked how the developers find out about setbacks.

Grieve couldn't give a factual answer, but said Staff receives a lot of calls asking what restrictions are on properties.

Hash asked if Staff could write a letter guaranteeing zoning.

Grieve said Staff does zoning determination letters for 25 dollars.

Klempel asked if the subdivision went before the Planning Board.

Grieve said no because it was a minor subdivision.

Wagner asked who determines property lines.

Grieve said most of the time people hire surveyors but the County has no building department to determine property lines.

Klempel said the home is ranch style so it sprawls out over the property.

APPLICANT

Andy Belski, F & H Surveying, said Shaw came to him with the variance problem. The property was originally surveyed with the wrong property line. Shaw designed the house to fit the property line but in May of 2006 he found out the property line was wrong. He said the applicant looked at doing a boundary line adjustment but due to an easement across the property it was not an option. He said Shaw has attempted to comply with the zoning regulations the whole time but didn't hire a surveyor first so the property line was not accurate.

Colby Shawn, applicant, said by looking at the plat he thought he knew where his boundary line was. His neighbor hired a surveyor to find the pins to put in a septic system and

found the mistake. His neighbor offered to sell him part of the property to come into compliance with zoning but because of a shared well it was not possible. He discussed the different routes he tried to fix the problem. He asked the Board for a variance because it was an honest mistake and there were no safety hazards.

**PUBLIC
COMMENT**

Mark Swagger, owns the adjoining property, said he is opposed to the variance because he doesn't want the Board to set a precedence for future variance applications. There is a lot of construction going on so more people are going to be requesting variances. He said there are going to be a lot of violations coming before the Board and he asked the Board to deny the variance.

**STAFF
REBUTTAL**

Grieve said the applicant does not meet all the criteria for a variance.

**APPLICANT
REBUTTAL**

None.

**BOARD
DISCUSSION**

Hash said the applicant has to meet all the requirements to receive a variance. He said it is tragic what happened to the Shaw's because of the risk a builder took. He doesn't find a reason to grant the variance because the applicant does not meet the criteria but he does sympathize with the applicant.

Klempel said the applicant met four of the eight criteria. She was surprised the house was built without finding the proper boundary line.

Shaw said there was an attempt to find the stakes but the developer and builder couldn't find them.

Sagami asked if the variance could be split to allow for one violation but not the other.

Harris said the application came in as a variance for both parts.

Hash said the adjoining property owner is affected by a variance and is opposed to it.

Sagami said the cluster rules are hard for the average person to figure out and he would have made the same mistake.

Hash said people need to go to professionals before doing any work.

Hollinger said the conditions for a variance are to make decisions before the buildings are built. He said the Board always struggles with the after-the-fact variances because of the problems they cause.

Klempel agreed with Hollinger about the variances.

Wagner said the house would fit if it was twisted around but then it wouldn't have the view it has now. He asked what part of the house is where the 17-ft violation is.

Shaw said it's the garage.

Harris said Staff tried to determine the regulations objectively but a variance needs to meet all the criteria to be granted. He said the applicant can appeal the Board's decision.

Belski said if Shaw bought more land he could still not bring the property into compliance because of setbacks from the parent property.

Sagami said there are two solutions: demolition or variance.

MOTION

Hash made a motion seconded by Wagner to adopt Staff Report FZV 07-03 and deny the zoning variance.

BOARD DISCUSSION

Hash said if the Board grants the variance it would set a very difficult precedent for future variance requests.

Hollinger said the ratio of "variances to houses built" is very small.

Sagami thinks the criteria can be massaged to grant the variance.

Harris said even if the variance is granted separately, the Board has to rationalize granting the 17-ft variance.

Sagami said his rationalization is the regulations for this problem were not easily determined.

Hash said it is a very dangerous precedent to set.

ROLL CALL

On a roll call vote the motion passed 3-2 with Klempel and Sagami dissenting.

**SECTION 16
PARTNERSHIP
CONDITIONAL
USE PERMIT
(FACU 07-01)**

A request by Section Sixteen Partnership, for a Conditional Use Permit to allow trucks to haul materials using a direct access approach onto Church Drive, approximately 2,640 feet from the intersection of Farm to Market Road and Church Drive. The intention is to facilitate a materials haul contract with the Montana Department of Transportation for the U.S. 93 Improvement Project. This request would place haul trucks directly onto Church Drive and avoid having to access Church Drive via the current Farm to Market Road access. The contract runs through October 2007.

Klempel said her husband owns a gravel pit but she has no financial interest in the project.

Hash recused himself.

STAFF REPORT

Jeff Harris of the Flathead County Planning & Zoning Office reviewed Staff Report FACU 07-01 for the Board.

**BOARD
QUESTIONS**

Klempel asked if Church Drive is in the plans for improvements.

Harris said no.

Wagner asked what the hours of operation are.

Harris said 7 a.m. to 7 p.m.

Wagner said he was on the site and in 27 minutes there were 33 trips that would equal 432 trips in 8 hours. He said there is not much room to pass each other on the roadway. He showed the Board a picture of the dust.

Harris said it would make sense for Tutvedt to use Church Drive but the road is not fit for the extra traffic. He said the concern is multiple accesses and the safety of the public. Harris said Staff asked the applicant if they would be willing to close the access to Farm-to-Market but the applicant didn't like that idea.

Klempel asked if the Board could require a bond from the applicant to get Church Drive fixed.

Harris said the Board can condition the applicant to maintain the road.

APPLICANT

Linda Tutvedt, applicant, handed out two permits they had already received. She said Patti Vernarsky from, the Road Department, said the approach is acceptable and showed on the map where the accesses are. She drew on a map where trucks coming and going from and where they would be stopping. She said they are working hard to meet the criteria and to be a good neighbors. She said they irrigate the property. She measured Church Drive and West Reserve and they are both 24 ft wide and the approach would also be 24 ft wide. She said gravel trucks can pass each other so cars should be able to pass each other. She said the Tutvedt's and Krueger's paved Church Drive to begin with so they should have the right to use it. She said Church Drive may not be perfect but it was paved by the people who intended to use it. She handed out papers to the Board with the conditions she would like to see approved. She said the permanent security gate would be illogical because there is no road coming to the access. She would like to see the access be on a permanent basis because it could be built to higher standards. She thinks it is a win-win situation because it saves wear and tear on a full mile of road and makes sense for the future.

Klempel asked about the DEQ letter Linda Tutvedt handed out.

Bruce Tutvedt said he and his father check the pumps at all hours of the night so having a locked gate would be illogical.

The Board discussed the locking of the gates and location of the access.

PUBLIC COMMENT

George Smith, from Schellinger, said he supports the pit. He said whatever the engineer comes up with for the road standards the applicant will adhere to. He said there are 200 loading trucks a day and 40 to 60 commercial trucks a day. He said the pit is over half the way done with the haul so unless it is a permanent approach it wouldn't be feasible to create it.

Klempel asked if they are considering any flag men.

Smith said no, they tried it before and it didn't work. He said it is easier for a truck to get out on a 35 mph road than a 70 mph road.

Klempel said they need to be prudent in their repair.

Smith said they have proved themselves. He discussed air standards and DEQ standards.

Gary Krueger, 805 Church Drive, chairman of the West Valley Land Use Advisory Committee, read part of the unapproved minutes from the meeting. He discussed the Staff Report, placement of the gate, and merits of a temporary versus permanent access. He has a relationship with Schellinger and can call them and say the trucks are moving too fast or there is too much dust and they fix the problem right away. He said a permanent approach to Church Drive would be the safest route to go.

Joyce Banzet, 250 Coclet Lane, travels Farm-to-Market Road and applauds the idea of going across Tutvedt's own land to get to Church Drive. She said if dust abatement is an issue it can be addressed, but doesn't want the traffics pulling on to Farm-to-Market Road. She wants the Board to act quickly and approve the approach for safety reasons.

John Bauer, of Schellinger Construction, said their truck drivers are screened heavily before they are hired. They do pre-employment and drug screening for all their employees and insist the drivers monitor the speed limit. If there are issues, the problem will get taken care of immediately. He said they issue warnings in three stages: verbal, written, and then termination.

Sagami asked if he received many complaints.

Bauer said no.

Smith said he has received two calls because he gave some ladies his personal number.

Jim Thrumer, 2216 West Valley Drive, hasn't seen any poor truck driving from the gravel trucks. He wants the access made permanent and doesn't think the Tutvedt's should have to be responsible for repairing Church Drive.

Clara LaChapelle, West Valley, showed the Board a picture of dust on her cell phone. She has to stop and wait for the dust to clear before she turns onto the roads. She said last week a truck ran a stop sign and was going 75 m.p.h. Her daughter got ran off the road by a gravel truck. She said trucks have

not been stopping at the stop signs and the highway patrol has had numerous complaints and written many citations. She wants to know what guarantee the Board is going to make that the trucks will stop at the stop signs. There has been numerous violations given to the Planning Staff and DEQ but no one will help. She discussed Schellinger's DEQ permit about visual emissions. She has filed complaints through the DEQ. She said the whole gravel pit is supposed to be fenced in but the gate has been open for three weeks. She went over numerous violations the pit has made. She said every time a permit is issued there is no compliance officers so no one is helping the citizens with the violations. She said in January on numerous occasions at 8 o'clock at night, people were working and she was blinded by the light when she was coming down the hill. She said it is obvious that Church Drive will break down if it is used by the gravel trucks. She asked the Board to deny the permit until the gravel pit comes into compliance.

Susan Schwager, said it is hard to pin neighbor against neighbor. She asked what would happen if the Tutvedt's next job is at a different location and they request another access. She has trouble finding a connection between farming and mining. She said the gravel pits are so close it has basically turned West Valley into an industrial park. She said the neighbors were told the pit would be no more intrusive than farming. She handed out pictures of the Krueger and Tutvedt pits she took from her window. She doesn't want to see any changes until some enforcement on the current violations can happen. She said there are trucks, that aren't Schellingers, which drive by the schools when they are getting out. She thinks the applicant should pay a bond for the County to keep the roads to County standards.

Irene Vandehey, 644 Bald Rock Road, said at the original meeting it was said the Tutvedt's shouldn't use Church Drive. She said no one is abiding by the rules and the truck drivers don't stop now and won't stop on Church Drive. She doesn't think Tutvedt should get the access. She wants the gravel pit shut down and thinks the Board should look at the tapes regarding the original meeting before making a decision on the access.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

Linda Tutvedt said the reason the access is a 90-degree angle is because it is required by law and is safer. She handed out papers regarding water quality and an open-cut mining report. She said the neighbors don't understand what the standards mean. She said they have been careful with their water quality. She showed on a map where the water comes and goes. She is trying to make the neighbors happy.

Bruce Tutvedt said they are living under a microscope and have had no violations or tickets. He said a lot of people are watching. He has a checklist from the County saying the gravel pit is in compliance. He stood on three of the closest neighbor's doorsteps and could barely hear the crushers and has tried to mitigate the noise as much as possible.

**BOARD
DISCUSSION**

Hollinger said if somebody is on your land when they are not supposed to be it is trespassing. He thinks it is reasonable to have a gate, but it should be closed during the hours of non-operation. He said the Board members are not experts on air quality.

Sagami said trucks going 35 m.p.h. are safer than trucks traveling at 55 m.p.h. He asked Bauer how the conditions are explained to the driving staff.

Bauer said the drivers are well schooled when they are initially hired and have safety meetings every week. He said the Staff has monthly formal safety meetings and when issues come to the office they are immediately sent to the project superintendent. Any time there is a complaint it is immediately addressed.

Wagner said all Schellinger's trucks he saw were behaving themselves very well.

Tutvedt said there are signs posted saying do not go by schools at certain hours.

Klempel asked why they were in operation outside of hours.

Tutvedt said there was a miscommunication on the permit and they were doing routine maintenance. He apologized about being out of compliance for two nights.

Klempel asked if Smith is responsible for the violations.

Tutvedt said they both are.

Wagner pointed out number 15 on one of the handouts.

Sagami asked where Staff wanted the gate put.

Harris said right at Church **Cross**. He said the applicant's argument is reasonable but there are different areas they could put in the approach. He said DEQ addresses air quality by citing and fining them for nuisance dust. He said the County has been fined and that's DEQ's way of dealing with dust. It's hard to measure dust and dust conditions are very difficult to enforce.

George Smith said when they get an air quality violation it is Tutvedt's problem, not the County's. He has qualified smoke readers that know how to measure dust.

Sagami asked what DEQ said when they got complaint calls.

Vandehey said they get different excuses and Rod Samdahl is a waste of their time.

Klempel asked if the burms are in compliance.

Smith said yes and they planted 400 plus trees to help with dust.

Tutvedt said during the winter the snow is white so what they see is steam, not dust.

Klempel asked if they considered a pad to help with the dust.

Smith said they have a pad.

The Board discussed the hazards and where the gate should be placed. They discussed deleting condition five, two, and amending condition three.

Smith said there is a water truck in the pit three to five times a day.

MOTION

Sagami made a motion seconded by Wagner to adopt Staff Report FACU 07-01 as findings of fact and issue a Conditional Use Permit with amended conditions.

ROLL CALL

On a roll call vote the motion passed 4-1 with Klempel dissenting.

**OLD
BUSINESS**

None.

**NEW
BUSINESS/
PUBLIC
COMMENT**

Harris told the Board Staff hired two new employees.

Linda Tutvedt thanked the Board for their volunteer work.

ADJOURNMENT

The meeting was adjourned at approximately 9:30 on a motion by Sagami seconded by Wagner. The next meeting will be held at 6:00 p.m. on July 3, 2007.

Scott Hollinger, Chairman

Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 7/3/07